EXHIBIT 1 FOR HB 684
DATE 2/22/07 ON THURSDAY
HB 684

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Members of the House Local Government Committee
The Montana State Legislature
Submitted electronically

Dear Chair and Members of the House Local Government Committee: RE: HB 684 Revising Impact Fee Legislation

I am writing to urge your support of HB 684 a bill to revise Montana's impact fee statutes. I want to begin by emphasizing that this bill is not intended to alter in any way the fundamental policies and principles adopted by the Legislature when it approved impact fee legislation in 2005. It is an effort to make Montana's impact fee legislation work for the communities it was designed to assist.

The University of Montana School of Law Land Use Clinic and I became involved in this issue when, during a meeting involving Ravalli County Attorney George Corn, Senator Rick Laible, and Representative Gary MacLaren, County Attorney Corn expressed concern with the existing legislation and described difficulties he was encountering in implementing impact fees in Ravalli County. The complexities and ambiguities in the existing law that were frustrating Mr. Corn were the same problems I had identified in reviewing the law at a conference after the 2005 Legislative Session.

Following that meeting, I offered to Mr. Corn and Senator Laible (one of the original sponsors of the impact fee legislation) that the Land Use Clinic would assist in preparing revisions to the law—again, not designed to alter the fundamentals of the law, but to resolve the unnecessary complexities and ambiguities. That effort has resulted in HB 684 that is now before you.

Montana's impact fee legislation, like impact fee legislation in other states, addresses three issues:

1. the type of local government budget items that can be the subject of an impact fee;
2. the portion of the cost of those local government budget items that can be assessed against a particular development; and
3. the process that must be followed by a local government in assessing impact fees.

HB 684 does not alter the basics of how Montana law answers each of those issues. What HB 684 does is to eliminate ambiguities, inconsistencies and unnecessary complexities in the law that inhibit local governments from adopting impact fees because of their uncertainty over the law's requirements, the cost of complying with the law's unclear requirements, and their very real concern with being sued over failure to comply with confusing legal

requirements. HB 684 addresses each of these concerns in an effort to make Montana's impact fee legislation workable for Montana's communities, while remaining fair and equitable to Montana's development community.

Let me provide a few examples of how HB 684 addresses these concerns. Regarding the type of local government budget items that can be the subject of an impact fee, HB 684 retains the law's basic premise that impact fees can only be imposed for "capital improvements" – defined as improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(a) However, current law (§ 7-6-1601(5)(b)(iv)) states that an impact fee does not include "offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity." I know the distinction this section is attempting to draw—but the current language would suggest that impact fees could not be imposed for the very type of "offsite improvements" that impact fees are designed for.

(b) While the defined term in the law is "capital improvements," one subsequent section of the law refers to "capital system improvements" and another says that the amount of the impact fee is to be based upon the actual cost of "public facility expansion or improvements." We simply need to clean up this inconsistent use of terms to eliminate potential confusion.

Regarding the portion of the cost of capital improvements that can be assessed against a particular development, current law provides, and I believe there is agreement among all concerned, that a given development should be responsible only for its "proportionate share" of the cost of capital improvements. There is also widespread agreement, as reflected in the defined term "proportionate share" in the current law, that "proportionate share" means "that portion of the cost of capital improvements that reasonably relates to the service demands and needs of the development."

(a) Unfortunately, under current law, despite the defined term "proportionate share," the law goes on to employ at least seven different descriptions of the relationship between the demand/need generated by the new development and the fee to be charged. These multiple descriptions of this relationship leave a community uncertain whether its fee meets the legal standards and certainly leave a community vulnerable to litigation. There is no purpose to be served by these multiple descriptions of this fundamental concept, and HB 684 provides a single definition which is then employed throughout the statute.

Regarding the process that must be followed by a local government in assessing impact fees, here again I believe there is clear agreement that a community must do its homework and provide a sound fiscal analysis before adopting impact fees. Current law, however, attempts to micromanage this process by providing 14 different requirements to be met by the local study; including some that, frankly, seem destined to trip up local governments. For example, *for each public facility for which an impact fee is imposed,* the local government is to prepare and approve documentation that (among the 14):

- Makes a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

- Makes a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
- Establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area; and
- Establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee.

Of course, if a local government fails to comply with any of these 14 explicit requirements, its impact fee is invalid.

(a) HB 684 reduces these 14 ultra-detailed requirements to 3, which is much more in line with impact fee legislation in other states. HB 684 requires the local government to conduct and adopt a needs assessment for each type of public facility for which impact fees are to be levied. That needs assessment must:

a. Establish standards for levels of service;
b. Project public facilities capital improvement needs over a defined period of time; and
c. Distinguish existing needs and deficiencies from future needs.
d. And as with current law, the data sources and methodology employed must be available to the public upon request.

The changes accomplished by HB 684 will give Montana communities an impact fee law that establishes reasonable standards and guidelines for impact fees, while not unnecessarily impeding their ability to adopt fair and equitable impact fees allowing them to address the fiscal impacts of growth.

Some parties have expressed concern to me that without the level of detail required by Montana's current statute, the impact fee legislation will not comply with federal constitutional case law. I teach federal constitutional law as it relates to land use planning, and I am fully comfortable in expressing my opinion that neither federal nor Montana law *require* the complexity in Montana's current legislation; and that, when properly implemented by communities, impact fees adopted pursuant to HB 684 will survive any constitutional challenge. Indeed, it is my opinion that impact fees adopted pursuant to HB 684 will be far less vulnerable to legal challenge than impact fees adopted under existing law.

Thank you for your serious consideration of HB 684.

Sincerely,
John Horwich